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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD MOODY,

Defendant and Appellant.

A142439

(San Francisco City & County  
Super. Ct. No. CT14008379)

While on postrelease community supervision (PRCS) for a previous offense, defendant Ronald Moody was arrested for domestic violence battery (Pen. Code, § 243, subd. (e)(1))<sup>1</sup> and violation of a restraining order (§ 273.6, subd. (a)). The Probation Department filed a petition to revoke his PRCS, and after a contested hearing, the trial court found defendant in violation, sentenced him to 180 days in county jail with credit for time served, and extended his community supervision. On appeal, defendant contends the court erred in denying his *Faretta*<sup>2</sup> motion. We affirm.

**BACKGROUND**

We recite only the facts relevant to the issue defendant raises on appeal.

In 2012, defendant was convicted of inflicting corporal injury on a cohabitant (§ 273.5). After serving a prison sentence, he was released in June 2013 on a three-year PRCS term.

<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> *Faretta v. California* (1975) 422 U.S. 808 (*Faretta*).

Eight months later, on March 22, 2014, defendant was arrested for domestic violence battery (§ 243, subd. (e)(1)) and violation of a restraining order (§ 273.6, subd. (a)). On March 26, the Probation Department petitioned to revoke defendant's PRCS on the ground he was in violation of the condition that he "not to engage in conduct prohibited by law." The trial court summarily revoked community supervision the same day and continued the matter for a section 4011.6 report and a hearing on April 18.

On April 18, the matter was continued for hearing to May 16.

On May 16, just after counsel stated their appearances and the prosecution called its first witness, the following colloquy occurred between the court and defendant:

"The Defendant: Excuse me, Your Honor.

"The Court: Sir, just talk to your attorney, Ms. Burns, please. [¶] This is a hearing now, which is a proceeding. If you wish to testify later, you may do so.

"The Defendant: No, I wanted time to prepare my own case.

"The Court: No sir—excuse me. Sorry, you wanted to represent yourself?

"The Defendant: Yes. I'd like to ask for a waiver of time, a hearing extension of time waived, so that I could have the time that I need to go do my research.

"The Court: Well, wait a minute. You just said you want to represent yourself. All right. That means you're making a *Faretta* motion.

"[Defense counsel]: I would ask, Your Honor, if Mr. Moody's making a *Faretta* motion at this time, if the District Attorney's Office—if we can clear the courtroom."

As the prosecutor left the courtroom, he objected to the motion as untimely. The colloquy between the court and defendant then continued:

"The Court: . . . So, sir, you wish to proceed without counsel, and you want to represent yourself; is that correct? That's just what you said.

"The Defendant: I would like to be advised of my hearing rights.

"The Court: Excuse me. Are you requesting to represent yourself, like you just said?

“The Defendant: I’m contemplating it. Because right now I feel like—well, she told me that today, on this day, that she see [*sic*] my case being dismissed or thrown out; that that would be the objective today.

“So every day I thought about that while I was at San Bruno jail. The officer that was just presently here told me when he arrested me, ‘Oh, you’ll get out a jail in a couple of days. I promise, you’ll be out.’

“So I got two people in here that lied to me, that I feel like they lied to me. And I feel like, you know, I’m the one that’s being bullied here in the courtroom. Because, you know, I mean, I feel there’s nobody on my side to help me.

“The Court: Okay, all right. Is there anything else?

“The Defendant: Plus the law library, you know, which I will have to get the deputies to give me time to go in there and utilize that so that I can prepare my own defense.

“Because I feel that I am being treated unfairly. Because even though I was with this woman, I was honest with my probation officer when I got out of prison. I asked the counselor, did I have any time of restraining orders.

“The Court: Okay. Now you’re getting to the merits. I want to focus right now on your initial statement to the Court that you wanted to represent yourself, okay?

“And, by the way—

“The Defendant: But first I would like to know, if I do do that, will I be able to have time to prepare my case, my defense.

“The Court: I can’t give you legal advice, sir. I can tell you this, that the whole purpose of having a hearing as soon as possible is in your interests.

“So let me just deal with one thing at a time. So as regards—

“The Defendant: I’m gonna have time—

“The Court: Don’t interrupt me, please sir.

“As regards your request to proceed without an attorney, that request is denied. It is not made within a reasonable time prior to the commencement of the hearing. It is untimely, and that request is denied.”

Defendant then became agitated and complained of an anxiety attack “[b]ecause of the way [the court] was talking to [him].” The court therefore continued the contested hearing for another week, until May 23, and also ordered a section 4011.5 medical

review. Since defendant had also complained about his attorney, the court indicated a *Marsden*<sup>3</sup> hearing might also be held the following week.

On May 23, defendant advised the court he was “fine” with his attorney representing him, but he had not received any medical attention. The court accordingly re-opened the hearing, ordered that defendant be seen by medical personnel and continued the contested hearing on the petition to revoke until May 30.

The contested hearing on the petition commenced on May 30 and was completed on June 3. The trial court found defendant violated the terms and conditions of his PRCS, sentenced him to 180 days in county jail with credit for time served, and extended his community supervision to September 10, 2016.

### DISCUSSION

A criminal defendant has a constitutional right of self-representation. (*Faretta*, *supra*, 422 U.S. at pp. 835–836.) While the Attorney General suggests there is no constitutional right to self-representation in connection with a petition to revoke PRCS, there is indisputably a right to self-representation in connection with probation revocation and sentencing (see *People v. Bauer* (2012) 212 Cal.App.4th 150, 155–156), and we discern little difference between probation revocation and sentencing and revocation of PRCS and sentencing. We therefore assume for purposes of analysis that *Faretta* applies.

To invoke the right to self-representation, a defendant must make an unequivocal assertion of it, within a reasonable time prior to the commencement of trial. (*People v. Jenkins* (2000) 22 Cal.4th 900, 959.) Upon review, we must affirm the trial court’s ruling if the record as a whole establishes defendant’s request was properly denied on any ground. (*People v. Dent* (2003) 30 Cal.4th 213, 218.)

We conclude defendant’s *Faretta* request was equivocal and therefore was properly denied. “ ‘[T]he *Faretta* right is forfeited unless the defendant “ ‘articulately and unmistakably’ ” demands to proceed in propria persona.’ [Citation.]” (*People v. Williams* (2013) 58 Cal.4th 197, 254 (*Williams*); *People v. Marshall* (1997) 15 Cal.4th 1,

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<sup>3</sup> *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

21 (*Marshall*) [demand for self-representation must be both articulate and unmistakable].) A motion for self-representation made from defendant's annoyance or frustration with counsel is not unequivocal. (*Marshall*, at p. 21.) "The court faced with a motion for self-representation should evaluate not only whether the defendant has stated the motion clearly, but also the defendant's conduct and other words." (*Id.* at p. 23.)

Here, when the trial court directly asked defendant during the closed session whether he was asking to represent himself, defendant responded that he was "contemplating it" and then complained his attorney had lied to him about the status of his case. He said he felt he was "being bullied in the courtroom" with "nobody on [his] side." When defendant began discussing the merits of his case, the court attempted to refocus him on the *Faretta* request, whereupon he asked about time to prepare his case "if" he chose to represent himself.

"Because the court should draw every reasonable inference against waiver of the right of counsel, the defendant's conduct or words reflecting ambivalence about self-representation may support the court's decision to deny the defendant's motion." (*Marshall*, *supra*, 15 Cal.4th at p. 23; *People v. Stanley* (2006) 39 Cal.4th 913, 932 (*Stanley*).) Here, defendant's conduct and words reflected some ambivalence about self-representation and it appears he was more frustrated with his attorney than anything else.

Because we conclude defendant's motion was equivocal and therefore properly denied, we need not, and do not, address the timeliness of his request (although we observe defendant did not raise the issue of representation until the third hearing on the petition and only after the prosecution called its first witness at the contested hearing on the merits). We therefore need not, and do not, address his argument regarding the continuances that occurred until the contested hearing, since the continuances are irrelevant to the equivocation issue.

#### **DISPOSITION**

The judgment is affirmed.

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Banke, J.

We concur:

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Margulies, Acting P. J.

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Dondero, J.

A142439, *People v. Moody*